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June 6, 1955

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CONCORD, N.H.

Honorable James C. Cleveland  
Senate Chamber  
Concord, New Hampshire

Dear Jim:

You have inquired by letter of May 27 whether that portion of the language of R. L., c. 118, s. 16 which provides for imprisonment for not less than one month nor more than six months upon a second conviction is mandatory, in the sense that it requires confinement for not less than one month upon conviction and cannot be suspended by a judge of either the municipal or superior court.

The answer to your question is by no means clear, in light of R. L., c. 379, s. 9, which was amended in 1951 to read: "Any court shall have power to suspend imposition or execution of sentence, or any part thereof, and to place the defendant on probation for a period not to exceed five years." It would seem to me that the intent of the Legislature in enacting R. L., c. 118, s. 16 was reasonably clear and that upon a second conviction alleged and proved as such, a defendant is required to be imprisoned not less than thirty days. However, the subsequent enactment of R. L., c. 379, s. 9 in very broad terms has caused such a divergency of view even within the staff of this office that I feel compelled to reply to your request by stating that inasmuch as the General Court is currently in session and your Committee has inquired whether or not the language of R. L., c. 118, s. 16 is mandatory, and inasmuch as the General Court may certainly make it mandatory in so many words if it wishes, that there be prepared by way of amendment to R. L., c. 118,

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s. 16, such interstitial phraseology as will state that upon second conviction no court shall have power to suspend all or any part of said minimum sentence. Such power is inherent in the General Court as a part of its authority to establish penalties for violations of the law.

I had previously prepared an opinion in this matter which took a position which it is now believed is unnecessary in view of the fact that you may by amendment at this time clarify the meaning of s. 16 as outlined above.

Sincerely,

Louis C. Wyman  
Attorney General

w/d